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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 613

WARDELL JACKSON,

Petitioner.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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INDEX

	PAGE
Petition	1
Reference to Official Reports	1
Jurisdiction of this Court	1
Date of Entry of Judgment Below	1
Date of Denial of Rehearing	2
Statutory Provision on Jurisdiction	2
Question Presented for Review	2
Reasons Relied on for Allowance of Writ	2
Statement of Facts	3
Reasons why the Writ should be Granted	5
Conclusions	7
Opinion of the Court Below — Appendix	1A

AUTHORITIES.

CASES.

Baumboy v. United States, 24 F (2d) 512	7
Giordenello v. United States, 78 S. Ct. 1245	6
Mapp v. Ohio, 81 S. Ct. 1684	5

CONSTITUTIONAL PROVISIONS.

Fourth Amendment to the Constitution of the United States	2, 5
Fourteenth Amendment to the Constitution of the United States	3
Article 2, Section 6 of the Constitution of the State of Illinois	2

STATUTES.

28 U.S.C. 1257 (3)	2
38 Ill. Rev. Stat. 413	4, 6

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Wardell Jackson, Petitioner, prays that a Writ of Certiorari issue to the Supreme Court of Illinois to review its decision and judgment rendered in this case.

REFERENCE TO OFFICIAL REPORTS.

The opinion of the Supreme Court of Illinois in *The People of the State of Illinois, Defendant in Error* v. *Wardell Jackson, Plaintiff in Error,* is reported in 22 Ill. 2nd 382.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED. DATE OF JUDGMENT SOUGHT TO BE REVIEWED AND TIME OF ITS ENTRY.

The Supreme Court of Illinois is the court of last resort in the State of Illinois. The opinion and judgment sought to be reviewed was dated May 19, 1961 and was also entered on May 19, 1961.

DATE OF ORDER RESPECTING PETITION FOR REHEARING.

A Petition for rehearing was timely filed on June 1, 1961, under Rule 55 of the Supreme Court of Illinois which allows 15 days after the filing of the opinion to file such Petition. An order was entered on September 20, 1961 by the Supreme Court of Illinois denying a rehearing.

STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION ON THIS COURT.

The jurisdiction of this Court is invoked under the provision of 28 U.S.C. 1257 (3).

THE QUESTION PRESENTED FOR REVIEW.

Was the complaint for a search warrant issued by a Justice of the Peace in the State of Illinois to search the home of the Petitioner in compliance with the Fourth Amendment to the Constitution of the United States and its identical counterpart, Article 2, Section 6 of the Constitution of the State of Illinois.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

A.

The provisions of the Fourth Amendment to the Constitution of the United States and Article 2, Section 6 of the Illinois Constitution is as follows:

> "The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized"

and that the Complaint for the search warrant did not comply with the provisions of this amendment.

B.

The Fourteenth Amendment to the Constitution of the United States, among other parts reads as follows:

> "• • • no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor ~~shall~~ any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law",

and that by reason of said amendment to the Constitution, state authorities are required, in issuing warrants, to comply with the same constitutional requirements as are imposed on federal officers.

STATEMENT OF FACTS.

For a period of two weeks prior to January 8, 1960, Richard Davenport, a deputy sheriff of Champaign County, surveilled the home of the defendant, Wardell Jackson. (Ab. 32) He observed a woman two or three nights a week arrive at the defendant's home, approximately at 7:45 in the evening and remain fifteen minutes, (Ab. 32) and he never saw this woman carry anything but a purse, (Ab. 33) and he did not actually know what the woman was doing in the house. (Ab. 35) He had some prior information but did not have it first hand. (Ab. 34)

On January 18, 1960, Richard Davenport signed a complaint for a search warrant, (Ab. 33) and in his complaint he stated that he believed there were policy tickets and or lottery tickets in the residence of the defendant, and as a basis for said belief he stated that ~~he observed~~ people known to him to be engaged in policy or lottery activities entering the premises. (Ab. 34)

As a result of this complaint a search warrant was signed by two Justices of the Peace of Champaign County.

(Ab. 22) The warrant authorized the search of the defendant's home located at 608 East Columbia Street, Champaign, Illinois and directed a search for certain *lottery tickets,* policy tickets, writing, slips, papers or documents representing or being a record of a chance, sale or interest in numbers sold, *drawn or to be drawn,* in the nature of a bet, wager or insurance upon the drawing or drawn numbers of a public or private lottery, and apparatus, equipment and devices used therefor. (Ab. 23)

On the night of January 18, 1960, Deputy Sheriffs, and City police went to the home of the defendant and executed the warrant. (Ab. 36)

As a result of the search, the authorities found policy and lottery paraphernalia. The Defendant was placed under arrest and charged under Section 413, Chapter 38 of the Illinois Revised Statutes as being in possession of policy paraphernalia and further, operating a place for policy playing.

That prior to the trial, the Petitioner presented a Petition to Quash the Search Warrant and to Suppress Evidence. That said Petition contained, among other objections, the following paragraphs:

> • • • "6. Said complaint fails to set forth any grounds on which a reasonably prudent man could base a just and reasonable grounds for his belief as set forth in said complaint.
>
> 7. Said complaint fails to set forth sufficient facts to show probable cause for the issuance of said search warrant in violation of Section 6, Article II of the Illinois Constitution of 1870, and Section 692, Chapter 38, of the Illinois Revised Statutes." • • • (Ab. 21)

and that said Motion to Quash the warrant was duly overruled (Ab. 28), whereupon, the Petitioner was tried, found guilty and sentenced to ten months in the County Jail and fined One Thousand Dollars.

REASONS FOR GRANTING THE WRIT.

The reason for the grant of a Writ of Certiorari in this case is dictated from the provisions of the Fourth Amendment to the Constitution of the United States, which is as follows:

> "The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

In a recent decision by this Court, *Mapp* v. *Ohio*, 81 S Ct. 1684, at page 1691 this court stated:

> "• • • We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible, in a state court.
>
> IV.
>
> Since the Fourth Amendment's right of privacy has been declared enforceable against the states through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. • • •"

In the case before the bar a search warrant was signed by two Justices of the Peace of Champaign County, Illinois. The complaint upon which the search warrant was based stated, (Ab. 26)

> "• • • and that as grounds for his belief he says said premises have been under surveillance and persons known by me to be employed in such activities of policy game or lottery have been seen by me entering said premises."

This complaint was attacked by a motion to quash the warrant and suppress the evidence, made prior to the commencement of the trial, (Ab. 19) and said motion was duly overruled. (Ab. 28) One of the bases for said motion, among others, was that said search warrant was issued without probable cause and contrary to the constitutional rights of the petitioner.

The decision of the Supreme Court of the State of Illinois in sustaining the validity of the complaint runs contrary to the opinions of this court.

In *Giordenello* v. *United States of America*, 78 S. Ct. 1245, this court has stated at page 1250:

> "He (the examining magistrate) should not accept without question the complainants mere conclusion that the person whose arrest is sought has committed a crime."

And the court further states in the same case at page 1250:

> "Here in the absence of an indictment, the issue of probable cause had to be determined by the commissioner, and an adequate basis for such a finding had to appear on the face of the complaint. • • •"

In the case before the bar, the defendant was tried on misdemeanor informations, pursuant to Chapter 38, Sec. 413 of the Illinois Revised Statutes, charging the petitioner with possession of policy equipment and using his home for policy playing. The complainant could not reasonably know or conclude that these crimes were being committed by his observation alone as stated in his complaint for the search warrant, that permitted him to search the petitioner's home.

In *Baumboy* v. *United States,* 24 F (2d) 512, the Circuit Court of Appeals, of the ninth circuit held as insufficient to constitute probable cause a similar complaint which was as follows at page 513:

> "Affiant, on or about August 25 and 26, 1926, watched the premises occupied and controlled by a narcotic dealer known to the affiant as Bom Boy, located in the St. Elmo Hotel, Stockton, Cal., and at the time and place affiant saw known addicts going to and from said hotel, and that affiant overheard one known addict, in conversation with Bom Boy, say that Bom Boy was out of morphine, but had plenty of cocaine. Affiant further alleges and avers that he knows Bom Boy is an extensive dealer in Narcotic Drugs."

The Court held that observation of the affiant could not lead him to the proper conclusion that at the time of the issuance of the warrant narcotics were being kept on the premises. The affidavit in the case before the bar for the search of the petitioner's home is certainly weaker and contains much less information than in the case before the ninth circuit.

CONCLUSIONS.

It is respectfully submitted that the Supreme Court of the State of Illinois was in error when it stated that the petitioner waived his constitutional rights to complain about the affidavit for the search warrant because he submitted no testimony to accompany his petition to quash the warrant and suppress the evidence, for the reason that the probable cause for issuance of the search warrant could be determined from the complaint itself. And it is further submitted that the Supreme Court of the

State of Illinois erred when it held that this complaint for the search warrant was sufficient to satisfy the constitutional requirements of the United States and the State of Illinois Constitutions.

Respectfully submitted,

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APPENDIX.

Opinion rendered by the Supreme Court of Illinois, Docket No. 36186—Agenda 10—March, 1961, filed May 19, 1961.

MR. JUSTICE DAILY delivered the opinion of the court:

After being granted a change of venue from the county court of Champaign County, the defendant, Wardell Jackson was tried by a jury in the criminal court of Cook County and was found guilty of unlawfully possessing certain policy paraphernalia, and of maintaining a place for policy playing. Judgment was entered on the verdict and defendant was sentenced to the county jail for a period of ten months and fined the sum of one thousand dollars. He prosecutes this writ of error for reviewing contending principally that the trial court erred in denying his motion to suppress evidence seized under authority of a search warrant which he contends was void, first, because the complaint therefor was based on hearsay and the conclusions of complainant and, second, because the warrant did not comply with section 2 of division VIII of the Criminal Code. (Ill. Rev. Stat. 1959, chap. 38, par. 692.) Although the crime was a misdemeanor for which a writ of error should normally be prosecuted to the Appellate Court, defendant's contention that the circumstances of the warrant were such as to make the search and seizure an unreasonable one involves a constitutional question within the concepts announced in *People* v. *Watkins*, 19 Ill. 2d 11, and *People* v. *Mayo*, 19 Ill. 2d 136.

Pertinent facts show that Richard Davenport, a Champaign County deputy sheriff, possessing "prior information" given to him by an undisclosed person, kept the residence of defendant under surveillance for a period of two weeks prior to January 18, 1960. Two or three nights of each week he saw a woman, Marie Thomas, enter defendant's home. On each occasion she remained inside

from five to fifteen minutes, then drove away with a man in a waiting car. On January 18, 1960, Davenport signed a complaint for a search warrant which alleged his belief there was policy paraphernalia in the premises and set forth "that as grounds for his belief he says said premises have been under surveillance and persons known by me to be employed in such activities of policy game or lottery have been seen by me entering said premises."

As a result of the complaint, two justices of the peace signed and issued a search warrant directing a search for lottery-policy equipment at the address of defendant's home. County and city law officers proceeded to execute the warrant the same night and, upon entering defendant's residence, found in the kitchen the defendant, Marie Thomas, and Amanda St. Charles, a 69-year-old resident of the same address. After the search warrant was read to defendant the officers searched the premises and found policy paraphernalia wrapped in a table cloth laying on a kitchen cabinet, in the upper rooms, in the garage, and in the pockets of clothing hanging in a hall. According to one deputy, defendant admitted the clothing was his.

It also appears that on January 8, 1960, an information charging defendant with a violation of the Illinois Liquor Control Act was filed in the county court of Champaign County and a criminal Capias was issued by the clerk of that court. The officers also had this Capias in their possession when they entered defendant's home on January 18, 1960, and it was also read to defendant along with the search warrant. Although the People contend that the search of the premises may also be justified as an incident to the valid arrest under the Capias, in the view we take of the record this question need not be considered.

When brought to trial under an information charging him with violating the lottery-policy laws, defendant made a motion to quash the search warrant and to suppress the evidence seized under its authority alleging various defects in the complaint and the warrant. At the hearing on the motion the testimony related only to defendant's arrest

for the liquor violation and we gather he was pursuing some theory that the Capias issued for that offense was in some manner misused to conduct the search for policy paraphernalia. The trial court, however, found that the Capias arrest was only incidental to the execution of the search warrant and denied the motion.

Deputy Davenport was not called by defendant to testify at the hearing on the motion to quash and suppress, but was a witness for the prosecution at the ensuing trial of the cause. Basing his attack entirely upon Davenport's testimony on the latter occasion, defendant contends for the first time in this court that the search warrant was improperly issued because the complaint was based on hearsay and conclusions, rather than facts within the personal knowledge of the complainant. No claim is made here that the ultimate facts stated did not show probable cause, (and we agree with the People that any contention to the contrary has been waived,) but only that probable cause was established in an improper manner. Even if it were to be assumed this issue was raised below, ruled upon and properly preserved for review, the contention would still be of no avail to defendant. The simple truth is that the complaint does not purport to be based on hearsay or conclusions, but upon facts within the complainant's own knowledge, learned while the defendant's residence was under surveillance.

Moreover, even if the complaint had been in part based on hearsay, such a circumstance would not necessarily be fatal. In the recent case of *Jones* v. *United States*, 363 U.S. 257, 267-271, 4 L. ed. 2d 697, 706-708 (March 1960), it was held that hearsay may be used to establish probable cause for a warrant, so long as there is a substantial basis for crediting the hearsay. We have indicated before that we will follow the decisions of the United States Supreme Court on identical State and Federal constitutional problems. *People* v. *Castree*, 311 Ill. 392; *People* v. *Tillman*, 1 Ill. 2d 525.

Defendant next contends the search warrant was void because it did not comply with section 2 of division VIII

of the Criminal Code. (Ill. Rev. Stat. 1959, chap. 38, par. 692.) Subparagraph 3 of section 2 authorizes the issuance of a search warrant: "To search for and seize lottery tickets, or materials for a lottery, unlawfully made, provided or procured, for the purpose of drawing a lottery." The warrant in the instant case authorized a search for: * * * certain lottery tickets, policy tickets, writings, slips, papers or documents representing or being a record of a chance, sale or interest in numbers sold, drawn or to be drawn, in the nature of the bet, wager or insurance upon the drawing or drawn numbers of a policy or private lottery, and apparatus, equipment and devices used therefor."

Drawing upon general language in past decisions to the effect that a search warrant must contain every statutory requirement, (*Earl* v. *People*, 117 Ill. App. 608), and that a justice of the peace has no right to issue a warrant that enlarges upon the statute. (*White* v. *Wagar*, 185 Ill. 195,) defendant argues the warrant was void because the statute authorizes a search neither for "policy" tickets, nor for lottery tickets or chances "already drawn." There is no merit to either proposition. The term "lottery" has no technical meaning in law distinct from its popular signification, (*Dunn* v. *People*, 40 Ill. 465, 467) and we know from common knowledge, from statutory definition (Ill. Rev. Stat. 1959, chap. 38, par. 412,) and from testimony in the present record that policy is but a specialized form of lottery and that both are devices by which one may secure a prize by chance. Thus, while subparagraph 3 of section 2 of division VIII of the Criminal Code makes no specific mention of "policy," the language used in the search warrant was permitted by the broad definition of "lottery" as that term is commonly understood. In like manner, the statutory language does not permit the distinction which defendant seeks to make between tickets for lotteries not yet drawn and tickets for lotteries already drawn. The statute permits a warrant to "search for and seize lottery tickets," and a ticket drawn or undrawn falls within the plain and ordinary meaning of such language.

As a further grounds for attack on the warrant, defendant asserts that it failed to comply with subparagraph 4 of section 2 of division VIII of the Criminal Code, (Ill. Rev. Stat. 1959, chap. 38, par. 692) by omitting to charge that the place to be searched was used for the purpose of unlawful gaming. (*Cf. Early* v. *People*, 117 Ill. App. 608) The warrant here, however, was issued under authority of subparagraph 3, the language of which, (*viz.*, materials for a lottery",) is sufficiently broad to authorize the search for "apparatus, equipment and devices" used for a lottery.

We conclude that the complaint and warrant were not subject to the infirmities charged by defendant and that the search of his premises was therefore a reasonable one falling outside the constitutional prohibitions against unreasonable searches. Accordingly, the trial court did not err in denying the motion to quash and suppress.

Defendant was charged and found guilty under an eight-count information, seven of which charged the unlawful possession of policy paraphernalia, and the eighth charging that he kept his residence as a place for policy playing. For his next contention, he urges that the verdict of the jury was not supported by the evidence in that the prosecution failed to show he was in possession of the policy paraphernalia, and that there was a complete absence of proof that his residence was used for policy playing.

The last contention may be quickly disposed of, for the People concede the failure of the proof to show that the residence was kept and used as a place for policy playing. However, such failure does not necessarily require a reversal. The other counts of the information charged distinct crimes of possession arising out of the same transaction; the jury returned a general verdict of guilty to the charges in the indictment; and the sentence imposed was within the statutory limits for the crime of possession. (See: Ill. Rev. Stat. 1959, chap. 38, par. 413; *cf. People* v. *Hightower*, 20 Ill. 2d 361.) In such a situation any good count sustained by the proof will

support a general verdict, although there are other counts which are unsupported. *People* v. *Gillespie*, 344 Ill. 290.

As to the contention that possession of the policy paraphernalia was not proved, defendant's brief argument, made without citation of authority, appears to be there was no possession because none of the paraphernalia was taken from his person. It is clear, however, that actual or physical possession is not required and that possession may be constructive as well as actual. (See: *People* v. *Green*, 362 Ill. 171; *People* v. *McGowan*, 415 Ill. 375; *People* v. *Mack*, 12 Ill. 2d 151; *People* v. *Matthews*, 18 Ill. 2d 164.) Here there is uncontradicted proof of constructive possession inasmuch as policy paraphernalia was found in defendant's living quarters and in clothing he admitted to an officer was his.

One witness for the prosecution was Cleveland Brown who testified as to the manner in which the policy game operated and identified certain of the People's exhibits as policy paraphernalia. Further, over defendant's general objection, the witness was permitted to testify that he had worked for the defendant in the policy business during the years, 1956, 1957 and 1958. Defendant, again without citation of authority, contends the portion of the witness' testimony last-described was prejudicial and inflammatory and thus improperly admitted. While we are familiar with the rule that evidence proving or suggesting the commission of another crime is generally inadmissible if relevant only for the purpose of showing a disposition to commit crime and inviting an inference of guilt for that reason (*Farris* v. *People*, 129 Ill. 521; *Crane* v. *People*, 168 Ill. 395), at the same time evidence of other offenses may be admissible to show guilty knowledge (*DuBois* v. *People*, 200 Ill. 157), specific intent (*People* v. *Hobbs*, 297 Ill. 399), motive (*People* v. *Laures*, 289 Ill. 490), and design or plan (*People* v. *Rooney*, 355 Ill. 613). Under the statute which prohibits the possession of policy, it is essential that the items be possessed "knowingly," a term that implies a person must be aware of the fact of possession and also have

knowledge of the nature of what is possessed. Brown's testimony, while perhaps prejudicial to some extent, was relevant and proper to show defendant knew the items he possessed were in fact policy paraphernalia. In a criminal case, where evidence is relevant and otherwise admissible it is not to be excluded because it may also have a tendency to prejudice the accused. *People* v. *DeFrates*, 395 Ill. 439.

The judgment of the criminal court of Cook County is affirmed.

Judgment affirmed.